

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 14, 2018 appellant, then a 62-year-old international aviation safety inspector, filed a traumatic injury claim (Form CA-1) alleging that on February 21, 2018 he sustained a left shoulder injury when lifting baggage during arrival at an airport, while in the performance of duty. He did not stop work. OWCP accepted the claim for left biceps tendon tear and left shoulder rotator cuff tear. Appellant underwent an OWCP-authorized arthroscopic left rotator cuff repair; left shoulder arthroscopic synovectomy and debridement of the glenohumeral articulation and biceps stump; left shoulder arthroscopic subacromial decompression; and open subpectoral biceps tenodesis on August 30, 2018. He stopped work on August 30, 2018, and returned to work on October 9, 2018.

In a July 24, 2019 report, Dr. Yolanda Petropsky, a Board-certified occupational medicine physician, noted appellant's history of injury and medical treatment. She noted that he was status post left rotator cuff repair with partial acromioplasty, as well as biceps repair. Appellant's diagnoses were listed as left arm biceps muscle, fascia, and long head tendon muscle injury, left shoulder joint sprain, and cervicalgia. Dr. Petropsky provided physical examination findings including normal left shoulder range of motion (ROM). Using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² she determined appellant had seven percent whole person impairment, and that he had reached maximum medical improvement (MMI).

On September 20, 2019 appellant filed a claim for a schedule award (Form CA-7).

On November 13, 2019 OWCP prepared a statement of accepted facts (SOAF) noting the accepted conditions as other injury of left arm muscle, fascia, and tendon of long head of biceps and left shoulder joint sprain. It noted that appellant underwent left shoulder surgery on August 30, 2019 and that he stopped work on the date of surgery and returned to work on October 9, 2019. Appellant's case record was then referred to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as OWCP's district medical adviser (DMA), for review.

In a November 25, 2019 report, Dr. Katz reviewed Dr. Petropsky's impairment rating. He found that appellant had reached MMI on July 24, 2019 the date of his impairment evaluation. Dr. Katz referred to the sixth edition of the A.M.A., *Guides* and utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 15-5 (Shoulder Regional Grid), pages 401-405, the class of diagnosis (CDX) for appellant's full-thickness tear of the right rotator cuff (functional with normal motion) resulted in a class 1 impairment with a default value of five. He assigned a grade modifier for functional history (GMFH) of 1, a grade modifier for physical examination (GMPE) of 1, a grade modifier for clinical studies (GMCS) of 1. Dr. Katz utilized the net adjustment formula, $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1-1) + (1-1) + (1-1) = 0$, which resulted in a CDX 1, default value C, five percent permanent impairment of the left upper extremity. He noted that, Table 15-5 allowed for utilization of the ROM rating method for appellant's left shoulder diagnoses, however, the medical evidence of record established that appellant had normal ROM and therefore had no permanent impairment due to loss of ROM.

² A.M.A., *Guides* (6th ed. 2009).

In an updated impairment rating dated March 9, 2020, Dr. Petropsky determined that appellant had 34 percent left upper extremity permanent impairment. In reaching this determination, she assigned a grade C using Table 15-5, a grade modifier of 2 using Table 15-7 and a grade modifier of 2 for clinical studies using Table 15-9. Dr. Petropsky based her impairment rating on decreased left shoulder strength status post rotator cuff repair and biceps repair surgery with shoulder arthroplasty. Thus, she determined appellant was a grade E using Table 15-5 with an impairment value of 34 percent.

On May 14, 2020 OWCP again referred appellant's case to Dr. Katz, the DMA, for a permanent impairment rating. In a May 20, 2020 report, Dr. Katz again reviewed the SOAF and medical evidence. He reviewed and disagreed with Dr. Petropsky's impairment rating finding that it was not probative. Dr. Katz explained that there was no evidence that shoulder resection arthroplasty was performed during or following appellant's 2018 arthroscopic surgery. The only impairment value of 34 percent with an E value that could be given using Table 15-5 would be for shoulder arthroplasty resection and he explained that there was no evidence in the record establishing that this procedure had been performed. Thus, Dr. Katz advised that his prior five percent left upper extremity permanent impairment rating remained unchanged.

By decision dated September 18, 2020, OWCP granted appellant a schedule award for five percent permanent impairment of the left upper extremity. The award ran for 15.06 weeks for the period July 24 through November 10, 2019.

LEGAL PRECEDENT

The schedule award provisions of FECA,³ and its implementing federal regulations,⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the shoulder, the relevant portion of the arm for the present case, reference is made to Table 15-5 (Shoulder Regional Grid) beginning on page 401. After the CDX is determined from the Shoulder Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the GMFH, GMPE, and GMCS. The net adjustment

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.*

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *id.* at Chapter 3.700.2 and Exhibit 1 (January 2010).

formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁷ Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.⁸

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than five percent permanent impairment of his left upper extremity, for which he previously received a schedule award.

In support of his claim appellant submitted reports dated July 24, 2019 and March 9, 2020 from Dr. Petropsky. In her July 24, 2019 report, Dr. Petropsky provided a whole person impairment rating of seven percent. Whole person impairment ratings, however, are of no probative value as whole person permanent impairment ratings are not permitted under FECA.¹⁰ In her March 9, 2020 report, Dr. Petropsky determined that appellant had 34 percent permanent impairment of the left upper extremity. She based her impairment rating on decreased left shoulder strength status post rotator cuff repair and biceps repair surgery with shoulder arthroplasty. The Board notes that, while Dr. Petropsky rendered an impairment rating of 34 percent and made a general reference to the A.M.A., *Guides*, she did not explain how the sixth edition of the A.M.A., *Guides* supported her impairment rating in reference to the diagnosis. She did not explain the medical evidence of record which documented that appellant had undergone a left shoulder arthroplasty. To be of probative value, the medical evidence must describe the impairment in sufficient detail so that it can be visualized on review and utilized to compute the percentage of impairment in accordance with the A.M.A., *Guides*.¹¹ Dr. Petropsky failed to adequately explain how the A.M.A., *Guides* supported her findings.¹² For these reasons, the Board finds that her reports are of limited probative value.

⁷ See A.M.A., *Guides* (6th ed. 2009) 405-12. Table 15-5 also provides that, if motion loss is present for a claimant with certain diagnosed conditions, permanent impairment may alternatively be assessed using section 15.7 (ROM impairment). Such a ROM rating stands alone and is not combined with a DBI rating. *Id.* at 401-05, 475-78.

⁸ *Id.* at 23-28.

⁹ See *supra* note 6 at Chapter 2.808.6(f) (March 2017).

¹⁰ *K.B.*, Docket No. 20-0355 (issued January 26, 2021); *C.S.*, Docket No. 19-0851 (issued November 18, 2019); *Marilyn S. Freeland*, 57 ECAB 607 (2006).

¹¹ See *H.N.*, Docket No. 19-1388 (issued March 20, 2020); *J.T.*, Docket No. 17-1465 (issued September 25, 2019); *G.D.*, Docket No. 16-1712 (issued August 11, 2017).

¹² *Id.*

The Board finds that the opinion of Dr. Katz, OWCP's DMA, properly determined that appellant had a five percent permanent impairment of appellant's left upper extremity under the sixth edition of the A.M.A., *Guides*. In his November 25, 2019 and May 14, 2020 medical reports, Dr. Katz reviewed the SOAF and medical evidence and found that appellant had reached MMI on July 24, 2019, the date of Dr. Petropsky's evaluation. He then addressed appellant's permanent impairment rating, reasoning that ROM was excluded as the medical evidence noted normal ROM. Dr. Katz indicated that, under Table 15-5, the CDX for appellant's full-thickness tear of the right rotator cuff resulted in a class 1, grade C with a default value of five percent. He derived a GMFH, a GMCS, and a GMPE of 1 respectively. Dr. Katz utilized the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1-1) + (1-1) + (1-1) = 0, which resulted in no movement from the grade C default value of five percent permanent impairment of the left upper extremity. He reviewed Dr. Petropsky's rating, and explained that her rating was invalid as the record contained no evidence that appellant had undergone a left shoulder arthroplasty resection, which would be the only basis for a 34 percent permanent impairment rating under Table 15-5.

The Board finds that Dr. Katz properly applied the DBI rating method under the standards of the sixth edition of the A.M.A., *Guides* to determine that appellant had five percent permanent impairment of his left upper extremity. Dr. Katz properly excluded the ROM rating method as the ROM findings were normal.¹³ As such, the Board finds that appellant has not established greater than the five percent permanent impairment of his left upper extremity for which he previously received a schedule awarded.

Appellant may request a schedule award or increase schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than five percent permanent impairment of his right upper extremity for which he previously received a schedule award.

¹³ *Supra* note 7 at 464.

ORDER

IT IS HEREBY ORDERED THAT the September 18, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 10, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board